

Summary of Legislation

HB 55S1 Captive Insurance Companies Amendments

House Sponsor: Rep. Jim Dunnigan
Senate Sponsor: Sen. Kevin Van Tassell

Background of Legislation

This Bill amends the Captive Insurance Companies Act, Title 31A, Chapter 37 and adds a new Chapter 37a that creates a new type of captive insurance company and enact the regulations that apply to these risk management structures. It also adds a new chapter to the Captive Insurance Companies Act that provides for the organization and operation of a special purpose financial captive insurance company (SPFC). An SPFC may be organized and operated to facilitate securitization transactions and other risk financing structures.

Changes to Existing Provisions of the Captive Insurance Companies Act that Keep Utah Competitive with Other States that are Domiciles for Captive Insurers.

- ☐ ***Technical and Conforming Amendments.*** These changes conform current language to the Office of Legislative General Counsel’s Drafting and Style Manual and correct language to clarify the affected statutes.
- ☐ ***Association Captives.*** Sections 31A-37-102(2) and (3) are amended to clarify that an association captive can insure the association itself along with its members.
- ☐ ***Industrial Insured Captives.*** Sections 31A-37-102(1), (2), (14), (17) and (18); 31A-37-106, and 31A-37-202 are amended to allow an industrial insured captive insurance company to insure the risks of controlled unaffiliated business of an industrial insured and its affiliates. The advanced approval of the commissioner is required before the industrial insurance captive insurance company can insure controlled unaffiliated business.
- ☐ ***Captives Formed as Limited Liability Companies.*** Sections 31A-37-102(10) and (20) are amended to allow a captive insurance company to be formed as a manager-managed limited liability company. The definitions of “parent,” “association,” and “industrial insured group” are amended to clarify the requirements for formation of a pure captive, association captive and an industrial insured captive as a limited liability company.
- ☐ ***Captive Insurance Companies Required Accounting Method.*** Section 31A-37-501 is amended to clarify that the Commissioner may require a captive insurance company to use statutory accounting principles for purposes of preparing its annual report.
- ☐ ***Rehabilitation and Liquidation of Captive Insurance Companies.*** Section 31A-37-104 is amended to clarify that Title 31A, Chapter 27a, which covers supervision, rehabilitation and liquidation of insurance companies applies to captive insurance companies, except as specifically provided in other provisions of Chapter 37 and Chapter 37a.
- ☐ ***Sponsor of a Sponsored Captive Insurance Company.*** Subsections 31A-37-102(21) and 31A-37-402 are amended to expand the list of persons qualified as the sponsor of a sponsored captive

Insurance company, to include any person approved by the commissioner after a finding that such approval is not inconsistent with the purposes of the captive insurance act.

☐ **Annual Fees.** Subsection 31A-3-304(5)(b) is amended to so that funds received from captive insurers by the department that exceed \$750,000 are treated as free revenue in the General Fund, effective July 1, 2010. Funds equal to and below the cap will be used to fund the captive division in the department.

New Chapter Providing for Special Purpose Financial Captive Insurance Companies

The key provisions of the new SPFC chapter are:

- ☐ An SPFC's insurance operations are limited to reinsurance of a licensed ceding insurer.
- ☐ An SPFC's primary financial responsibility is to fulfill its obligations to a ceding insurer under a reinsurance contract. These obligations take precedence over the SPFC's obligation to make any payments to investors holding securities offered directly or indirectly by the SPFC. The SPFC must be operated to assure its financial solvency within guidelines established by the insurance commissioner.
- ☐ The commissioner will consult with the insurance regulators in a ceding insurer's domicile jurisdiction regarding an SPFC's proposed reinsurance and securitization agreement and related reinsurance collateral arrangements comply with the requirements of the ceding company's domicile regarding reinsurance arrangements, and with any other requirements the commissioner deems appropriate.
- ☐ An SPFC's application for licensure must include a complete description of parties and transactions relevant to a proposed reinsurance and securitization, such that the commissioner can fully evaluate the SPFC's role in a proposed securitization of a risk.
- ☐ A sponsored captive insurance company may be licensed as an SPFC, such that the SPFC conducts reinsurance and securitization transactions through protected cells with respect to various ceding insurers, under terms and conditions approved by the commissioner.
- ☐ The commissioner may exempt an SPFC from one or more provisions of Chapter 37a if the commissioner determines a provision is inappropriate in light of the SPFC's operations.

Support for Legislation

- ☐ This is an Insurance Department bill.
- ☐ The Utah Insurance Commissioner supports the bill.
- ☐ We do not anticipate any opposition to the bill. We are aware that one domestic life insurance company favors the bill